IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr. Appeal No. 478 of 1999.

Reserved On: 28.11.2006.

Date of decision:14 .12.2006.

State of H.P. ... Appellant

Versus

Om Prakash & Another … Respondents

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant: Mr. Ashutosh Burathoki, Addl. Advocate General.

For the respondents: Mr. Vijay Bhatia, Advocate.

V.K. Ahuja, J.:

This appeal has been filed by appellant/State of H.P. against the judgment of the Court of learned Additional Chief Judicial Magistrate, Ghumarwin, dated 29.1.1999, vide which the respondents were acquitted of the charges framed under Sections 325/323/34 I.P.C.

The case of the prosecution is that on 20.11.1996 at about 6.00A.M., both the accused persons voluntarily caused grievous hurt as well as simple hurt to complainant Mangat Ram. The case was registered and the challan was filed. The respondents were tried by the learned trial Court resulting in their acquittal.

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[1]Whether reporters of Local Papers may be allowed to see the judgment? No.

I have heard Mr. Ashutosh Burathoki, learned Additional Advocate General, for the appellant and Vijay Bhatia, Advocate, for the respondents and have gone through the record.

The submissions made by the learned Additional Advocate General were that the statement of the complainant was duly corroborated by the statement of his brother PW2 Nikka Ram as well as an independent witness PW4 Nandu Ram and hence, the findings recorded by the learned trial Court are not sustainable and are liable to be reversed. On the other hand, the learned counsel for the respondents submitted that a scuffle had taken place for which a report was also lodged against the complainant party and relations in between the parties were inimical and, therefore, their evidence was rightly disbelieved by the learned trial Court.

On a perusal of the record of the case, it is clear that the complainant was examined as PW1 and had stated that Mehar Chand accused gave blows over his arm with danda and he suffered injury on his arm and Prakash Chand gave a blow with a danda over his head. He denied that he along with other witnesses had caused injuries to accused Balbir Singh and Kalasi. He admitted that a report was lodged with the police by the accused persons on the same day. He denied the suggestion that he suffered the injuries as a result of fall. He denied if there was any dispute in regard to the bamboo. He admitted that both the parties grappled with one another for nearly one hour and possibility that these injuries were suffered in that process cannot be ruled out. PW2 Nikka Ram is the real brother of the complainant who also admitted that there was a dispute in regard to the cutting of bamboos. He stated that the accused persons caught hold of him from his neck and threw him

on the stone. It was not so stated by the complainant as PW1. He stated in regard to the injury inflicted upon the arm of PW1 Mangat Ram and an other injury inflicted by his co-accused. He admitted that the mother of the accused persons also suffered one danda blow and the moment the blow was inflicted upon her person, the accused persons ran away from the spot along with danda. This clearly shows that in this process, the mother of the accused was inflicted blows, may be by the complainant party. He admitted that his father and Om Prakash accused father's are real brothers and their land is joint. He denied about the dispute in regard to the selling of bamboo. He stated that the blood stained clothes of Mangat Ram were not taken in possession, though PW1 Mangat Ram stated that these were taken into possession. He admitted that there was injury on the head of Kalasi, but he does not know how many stitches were there. He admitted that the injuries were suffered by Om Prakash and Balbir Singh by the beatings given by him and Mangat Ram and that the parties grappled for 10-15 minutes. He also admitted that Mangat Ram had fallen on the ground and there was a stone and that the possibility that these injuries were received in the scuffle or by fall cannot be ruled out.

PW4 Nandu Ram, the only independent witness stated that Prakash Chand gave blows with danda over the arm of complainant, though the name of the accused is Om Prakash. He stated that Om Prakash gave two blows with danda, while Mehar Chand also gave blows with danda. He stated that the quarrel continued for one hour at the spot. He denied if the accused persons had deposed against him. He denied if the blood had oozed out from the head of Kalasi, which had been admitted by the other witnesses. He admitted about the presence of

his son at the spot. He admitted that they are not on talking terms with one another, which shows that the relations in between the parties are strained.

From the above discussion, it is clear that in view of the contradictions and infirmity in the prosecution case, the version of witnesses was not believed by the learned trial Court and the said findings do not suffer from any perversity so as to interfere with those findings and as such, those findings are affirmed. The appeal filed by the appellant – State is dismissed. Bail bonds stand discharged forthwith. A copy of the judgment along with record be sent to the concerned Court.

(V.K. Ahuja),
Judge

December 14, 2006
(BSS)